SUPREME COURT OF THE UNITED STATES.

No. 245.

WILLIAM BINNS AND C. STOCKTON HALSTEAD, PLAINTIFFS,

vs.

CORNELIUS W. LAWRENCE.

On a certificate of division from the circuit court of the United States, for the southern district of New York.

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Gideon, Printer.

The President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that we, having inspected the records and files of the circuit court of the United States, for the southern district of New [L. S.] York, in the second circuit, do find certain paper writings there remaining of record in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Southern district of New York.*

At a circuit court of the United States, begun and held at the city of New York, in the southern district of New York, in the second circuit, on the first Monday of April, in the year of our Lord one thousand eight hundred and forty-nine.

Present, the honorable Samuel Nelson and the hon. Samuel R. Betts.

WILLIAM BINNS and C. Stockton Halstead
vs.
CORNELIUS W. LAWRENCE.

This is an action brought by the plaintiffs against the defendant, as collector of the port of New York, to recover the amount of certain moneys paid by them, under protest, to the said defendant, as such collector, for duties upon glass tumblers, imported at the dates and in the vessels named in the following table, in which are named also the duties charged by the said defendant on such several importations, and the amount which said plaintiffs claim to recover as having been improperly exacted; the said amount being, in each instance, the difference between the duty of 40 per centum ad valorem, charged and collected by said defendant upon such importations, under schedule B of the Tariff act of the 30th July, 1846, as "glass cut," and the duty of 30 per centum ad valorem, at which the said plaintiffs claimed to enter such importations under schedule C of the same act, as "glass tumblers, plain, moulded, or pressed, not cut or punted."

Ship.	Date.	Duty paid, 40 per cent.	Excess.
Howard - - -	1847, June 1	$842 30	$124 70
Washington - -	" " 16	1,130 00	47 90
Trident - - -	" " 30	445 60	47 20
Briareus - - -	" July 7	419 20	64 30
Ida - - - - -	" " 12	1,029 00	125 70
Franklin - - -	" August 2	200 20	34 30
Lucas - - - -	" " 2	246 00	24 00
27th of May - -	" " 20	111 10	16 90
Fame - - -	" " 2	695 40	79 20
Corvo - - -	" " 16	1,576 90	166 00
		$6,695 70	$730 20

The case came on to be tried before his honor Judge Nelson, and a jury, on the 3d of November, 1848, and the said jury found a verdict for the defendant.

The counsel for the plaintiffs having excepted to the charge of his honor, the presiding judge on the trial, and the said judge having signed the bill of plaintiffs' exceptions, the cause was argued before this court at this term, on the said bill of exceptions, on a motion for a new trial founded thereon.

Upon which said argument it occurred as a question whether, according to the true construction of the act of Congress of 30th July, 1846, entitled "An act reducing the duty on imports, and for other purposes," glass tumblers, the bottoms of which have been smoothed or flattened by the process of cutting or grinding, and glass tumblers which have been engraved on the sides by a similar process, should be charged with the duty of 40 per centum ad valorem, under schedule B of said act, as glass cut," or with the duty of 30 per centum ad valorem, under schedule C of said act, as "glass tumblers, plain, moulded, or pressed, not cut or punted."

On which question the opinions of the judges of this court were opposed.

Whereupon, on motion of the said plaintiffs, by their counsel, that the point upon which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of this court to the Supreme Court to be finally decided.

It is ordered, that the following statement of facts, which is made under the direction of the judges, be certified according to the request of the said plaintiffs, and the statute in such case made and provided.

Statement of facts.

That the tumblers in question consisted of two kinds, as follows:

1. Glass tumblers, the entire surface of the bottoms of which had been smoothed by the glass cutter, or grinder, previous to their importation by the plaintiffs.

2. Glass tumblers, on the sides of which ornamental figures had been engraved by the glass cutter or engraver, previous to such importation.

That the tumblers in question, of the first class, are only known in trade and commerce in the city of New York as "plain tumblers," or as "plain smooth bottomed tumblers," or as "plain tumblers with flattened bottoms."

That the tumblers in question of the second class are only known in trade and commerce in said city as "engraved tumblers."

That the tumblers in question (of both classes) are not known in trade and commerce in said city as "cut glass."

That all the material witnesses for the plaintiffs were merchants, importing and dealing in glassware.

That all the material witnesses for the defendant were manufacturers of glassware, or glass cutters and grinders.

That the designation "cut glass," as used in trade and commerce in said city, applies only to tumblers, the sides of which have been cut or ground, and that the importers of glassware and dealers in glassware in said city, do not consider tumblers of the description in question in this suit as coming within the designation, and if they received an order from a customer for "cut glass tumblers," would not regard it as including either smooth bottomed or engraved tumblers.

That by the testimony of the manufacturers and operatives, glass tumblers are manufactured entirely by the glass blower, or in part by the glass blower and in part by the glass cutter or grinder, and that glass blowing and glass cutting are distinct and separate trades, and processes of manufacture.

By the same witnesses. That the bottoms of glass tumblers, manufactured entirely by the glass blower are rough, particularly in the centre, being there broken off from the punt or stick on which made; and that when sold in this condition such tumblers are known in trade and commerce in the city of New York as "plain" or "plain rough bottomed tumblers."

By the same witnesses. That, after their completion by the glass blower, such rough bottomed tumblers frequently pass into the hands of the glass cutter, or grinder, by whom the centre of the bottoms of such tumblers is cut or smoothed, for the purpose of removing the particular roughness of that part of the tumbler, and that the process of thus cutting or smoothing the centre of the bottoms of such tumblers is called punting; and that tumblers manufactured by the glass blower, but the centre part of the bottoms of which have been so cut or smoothed by the glass cutter, are known in trade and commerce as "punted" tumblers.

By the same witnesses. That, after their completion by the glass blower, such rough bottomed tumblers frequently pass into the hands of the glass cutter or grinder, by whom the entire surface of the bottoms of such tumblers is cut or smoothed, and that tumblers manufactured by the glass blower, but the entire bottoms of which have been cut or smoothed by the glass cutter or grinder, are known in trade and commerce as "plain tumblers," or as "plain smoothed bottomed tumblers," or as "plain tumblers with flattened bottoms," and are similar to the tumblers in question of the first class.

By the same witnesses. That tumblers known in trade and commerce, and amongst manufacturers, as "moulded tumblers," or "pressed tumblers," are also made entirely by the glass blower; and are also rough bottomed until subjected to the process of punting, or smoothing and cutting above described.

By the same witnesses. That all cutting of glass is done by means of grinding upon wheels, and that there is no such thing as the cutting of glass in the manufacture of "cut glass" in any other way.

By the same witnesses. That the cutting or smoothing of the bottoms of the tumblers in question, (of the first class,) is done by the glass cutter, and that the process of cutting and smoothing is identical with that of punting, except that it extends to the entire surface of the bot-

tom of the tumblers, whereas the "punting" is limited, as above stated, to the centre of the bottom merely.

By the same witnesses. That the process of "punting," and the process of cutting or smoothing" the bottoms of the tumblers in question, are identical in their operation with that of cutting the sides of tumblers, known in trade and commerce as "cut glass."

It was proved that the time required to cut or smooth the bottoms of the tumblers in question, (of the first class,) is four or five times as long as that required for "punting" the bottoms of punted tumblers; and that tumblers with the bottoms cut or smoothed cost from 18 to 22 cents per dozen more than punted tumblers.

It was proved that the "punted" tumblers are charged with the duty of 40 per centum ad valorem under the Tariff act of 1846.

It was proved by the manufacturers and operatives that the process of engraving the tumblers of the second class is similar to that of cutting the tumblers of the first class, but is a finer species of work, requiring more experienced and skilful workmen, and the use of copper wheels instead of wood and stone wheels, and oil and emory instead of sand.

All which we have caused by these presents to be exemplified, and the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New York, this first day of December, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-fourth.

ALEX'R GARDINER, *Clerk*.

I, Samuel R. Betts, one of the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, do hereby certify, that the foregoing exemplification is in due form of law.

SAML. R. BETTS.